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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1386

FRISCO LAND AND MINING CO., a corporation,
Petitioner,

v.

STATE OF CALIFORNIA,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California, First District, Division One, After Entry of Order by the Supreme Court of the State of California Denying a Hearing

Brief for Respondent in Opposition

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OPINIONS BELOW

The unreported memorandum and minute order of the Superior Court for the County of Marin granting the state's motion for summary judgment is set forth in Appendix D to the Petition. The opinion of the Court of Appeal of the State of California (Appendix A to the Petition) is reported at 74 Cal.App.3d 736; 141 Cal.Rptr. 810 (1977). The order of the California Supreme Court denying a hearing is set forth in Exhibit B to the Petition.

JURISDICTION

The jurisdictional requisites are set forth adequately in the Petition.

QUESTION PRESENTED

Petitioner Frisco Land and Mining Co., Inc. has not stated fairly the question in this case. The question petitioner presents in its jurisdictional statement is stated more properly as follows:

1. Did the passage and operation of the California Coastal Zone Conservation Act of 1972 uniquely effect an uncompensated taking of petitioner's property by reducing its marketability and thereby contributing to petitioner's inability to maintain a cash-flow necessary to avoid foreclosure?

2. Having failed to exhaust its administrative remedies does petitioner have a judicial remedy?

STATUTES AND REGULATIONS INVOLVED

The permit and the exemption provisions of the California Coastal Zone Conservation Act of 1972 (1972 Coastal Act) (now repealed), formerly California Public Resources Code section 27000 et seq. are involved in this Petition. That act is set out in its entirety as Appendix 1 to this brief.

STATEMENT OF THE CASE

In 1971, petitioner acquired Oceana Marin, the subdivision development involved in this action. Located at Bodega Bay, Marin County, California, it consists of five units, two of which (# 5 and # 6) petitioner alleges were taken by the passage and operation of the 1972 Coastal Act. At the outset of this action, unit # 5 was subdivided fully; however, petitioner still owned most of the lots in

that unit. Unit # 6 was not yet subdivided. Significantly, petitioner alleges a taking of unit # 6 even though the Commission was never requested to nor did it take any action whatsoever with respect to Unit # 6. The only action involving Unit # 6 was the passage of the 1972 Coastal Act, an act petitioner concedes was constitutional (Appellant's Opening Brief to the California Court of Appeal, p. 19). The events and actions relevant to petitioner's claim are as follows:

A. 1972 Coastal Act.

The California Coastal Zone Conservation Act of 1972 was enacted as an initiative measure on November 7, 1972 and became effective the following day. It was designed to halt haphazard, uncontrolled growth on the California coast and to insure development of a plan for long-term management of the natural resources of the Coastal Zone. To achieve these objectives, the Coastal Act established a state commission and six regional commissions and directed that they should develop and submit to the legislature by December 1, 1975, a comprehensive plan for management of coastal resources. The Act did not impose a development moratorium; however, to protect valuable coastal resources during the planning process, it provided that after February 1, 1973, new development must obtain permit approval from the appropriate regional commission (§ 27400). Before issuing a permit the regional commission was required to find that the proposed development would not have a substantial adverse environmental effect and that it was consistent with the policy and planning objectives of the act (§ 27402). Any aggrieved person had a right of appeal to the state commission from a permit decision of any regional commission (§ 27423).

The act specifically exempted certain classes of developments from its operation, to wit: (1) developments which obtained a constitutionally vested right prior to November 8, 1972, the effective date of the act and (2) developments which completed substantial lawful construction prior to February 1, 1973 (§ 27404) and *San Diego Regional Commission v. See the Sea, Ltd.*, 9 Cal. 3d 888 (1973). Persons who claimed to be exempt from the act were required to apply to the appropriate regional commission to have the claimed exemption recognized. Just as with permit actions, any regional commission decision on an exemption application was appealable to the state commission (§ 27423).

B. Exemption Proceedings.

On or about March 6, 1973, pursuant to section 27423 of the act petitioner filed a claim of exemption from the permit requirements of the Coastal Act with the regional commission for portions of the subdivision. It filed the claim not only on its behalf but also on behalf of all present and future lot owners at Oceana Marin. By its application appellant sought to have the commission recognize its exemption for the completion of the subdivision of unit # 5 and for the construction of single family dwellings on all lots in units 1, 3, 4 and 5. No exemption was sought with respect to unit # 6. On May 3, 1973, after a public hearing, the regional commission found that petitioner had completed 75% of the subdivision improvement work in unit 5 in reliance on valid county permits. Accordingly the regional commission recognized that petitioner was entitled to complete the subdivision of unit # 5 free from the requirements of the 1972 Coastal Act. The regional commission found also that the petitioner did not intend to develop individual lots and had no building permits for such development. The regional commission found further

that the intent of the subdivider was to sell fully subdivided but undeveloped lots to persons who might develop them in their own good time. Accordingly, the regional commission concluded that neither petitioner nor its assignees had a vested right to accomplish development of houses on the subdivided lots free from the requirements of the 1972 Coastal Act. Specifically the regional commission concluded that:

> "The erection of houses by individual purchasers on individual lots in all units will constitute separate developments within the meaning of the Coastal Zone Conservation Act and such houses are not exempt from the permit provisions of the Coastal Zone Conservation Act."

Petitioner apparently did not disagree with this decision as it took no appeal to the state commission under section 27423 and sought no judicial remedy.

C. Overall Conditions.

Subsequent to its May 3, 1973 exemption decision, the regional commission worked with the petitioner in an effort to establish a uniform set of conditions which, when satisfied, would enable it to make the findings required by section 27402 of the act and thereby enable it to grant permits to individual lot owners for construction of houses at Oceana Marin. The establishment of overall conditions for the subdivision was to serve two important purposes. First, it would allow the commission to efficiently and fully assess the impact of total buildout of the subdivision. Second, it would provide lot owners and prospective lot owners with some degree of certainty about what must be done before a permit could be obtained. This degree of certainty would tend to minimize the adverse effects on marketability of the property created by the Coastal Act's

passage and thus actually increases the marketability of the property. In spite of these facts the petitioner, in September 1973, abruptly stopped cooperating with the regional commission in its effort to develop and adopt overall conditions. Ultimately, however, the regional commission and the property owners association reached agreement on a set of conditions that satisfied the requirements of the Act but did not operate onerously on property owners at Oceana Marin. Subsequent to the establishment of the conditions, numerous property owners obtained development permits and proceeded to develop their property.

The petitioner did not appeal to the state commission the action of the regional commission adopting overall conditions. Pursuant to section 27423 that action was appealable.

ARGUMENT

A. Introduction.

The central issue before the Court is whether petitioner is precluded from bringing this action by virtue of the fact that it failed to exhaust its administrative remedies. The California Court of Appeal so held and the facts support amply that holding (Petitioner's Appendix A-42 to 51). The underlying but peripheral issue is whether, because of Petitioner's precarious liquidity position, the passage and operation of the 1972 Coastal Act uniquely effected a taking of its property. Although the California Court of Appeal addressed that issue, its analysis was dicta only and need not be considered at this time (Petitioner's Appendix A-51 to 62).

B. Exhaustion.

All of the actions which petitioner complains of were actions of the regional commission. That is because petitioner never appealed to the state commission any of the regional commission's actions. Specifically, petitioner did not appeal the regional commission decision on its exemption application nor did it appeal the action of the regional commission adopting overall conditions for the development of individual houses. Under former Public Resources Code section 27423, each of those actions was appealable. Thus petitioner did not exhaust its administrative remedies. Having failed to exhaust its administrative remedies petitioner was precluded from seeking judicial relief.

In California the doctrine of exhaustion of administrative remedies is a fundamental rule of procedure. *Abelleira v. District Court of Appeal,* 17 Cal.2d 280, 292-293 (1941). Where a plaintiff has failed to exhaust an administrative remedy, the court has no jurisdiction to adjudicate its claim. *Metcalf v. County of Los Angeles,* 24 Cal.2d 267, 269-273 (1944); and *Davis v. California Coastal Zone Conservation Commission,* 57 Cal.App.3d 700, 704-705 (1976). With respect to the 1972 Coastal Act, the doctrine applies equally to permit and exemption actions. *South Coast Regional Commission v. Gordon,* 18 Cal.3d 832, 834 (1977); *State of California v. Superior Court,* 12 Cal.3d 237 (1974).

The only exception to the doctrine is when a person challenges the constitutionality of a statute *on its face.* In that circumstance a party need only bring an action for declaratory relief. *State of California v. Superior Court, supra,* 12 Cal.3d 237, 250-252 (1974). In this case there is no assertion that the 1972 Coastal Act was unconstitutional on its face. In its opening brief to the Court of Appeal at page 19, petitioner conceded that the Act was constitutional. Accordingly the exception to the exhaustion doctrine is not applicable in this case.

The federal exhaustion rule is the same. Where a state administrative remedy exists and is not used, then the

federal courts have no jurisdiction to adjudicate whether a statute was applied properly. See *Jablon v. Trustees,* 482 F.2d 997 (9th Cir. 1973), *cert. den.;* 414 U.S. 1163 (1974); *Whitner v. Davis,* 410 F.2d 24, 31 (9th Cir. 1969); and *Sea Ranch Ass'n v. California Coastal Zone Conservation Commission,* 537 F.2d 1058 (1976). Accordingly, the California Court of Appeal had no jurisdiction to hear petitioner's claim. Similarly this court has no jurisdiction to hear petitioner's claim.

C. The Underlying Claim.

Respondent refers the court to the discussion by the Court of Appeal (Petitioner's Appendix A-51 to 62) regarding the merits of petitioner's underlying claim. In essence, that court rejected petitioner's assertion that its unique liquidity and equity position should be taken into account in determining whether an otherwise valid application of a statute effected a taking of its property. Respondent concurs with that court's analysis.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari be denied.

Respectfully submitted,

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Appendix follows

APPENDIX

Appendix I

Division 18

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

Chapter		*Section*
1.	General Provisions And Findings And Declarations Of Policy	27000
2.	Definitions	27100
3.	Creation, Membership, And Powers Of Commisssion And Regional Commissions	27201
4.	California Coastal Zone Conservation Plan	27300
5.	Interim Permit Control	27400
6.	Penalties	27500
7.	Reports	27600
8.	Termination	27650

Division 18, addition proposed by Initiative Measure (1972), was approved by the voters at the general election held Nov. 7, 1972.

Repeal

Division 18 is repealed under the terms of section 27650 on Jan. 1, 1977.

CHAPTER 1. GENERAL PROVISIONS AND FINDINGS AND DECLARATIONS OF POLICY

Sec.

27000. Short title.
27001. Policy.

§ 27000. *Short title*

This division may be cited as the California Coastal Zone Conservation Act of 1972.

§ 27001. *Policy*

The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations; and that to protect the coastal zone it is necessary:

(a) To study the coastal zone to determine the ecological planning principles and assumptions needed to ensure conservation of coastal zone resources.

(b) To prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan.

(c) To ensure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.

(d) To create the California Coastal Zone Conservation Commission, and six regional coastal zone conservation commissions, to implement the provisions of this division.

CHAPTER 2. DEFINITIONS

Sec.

27100. Coastal zone.
27101. Coastal zone plan.
27102. Commission.
27103. Development.
27104. Permit area.
27105. Person.
27106. Sea.

§ 27100. *Coastal zone*

"Coastal zone" means that land and water area of the State of California from the border of the State of Oregon to the Republic of Mexico, extending seaward to the outer limit of the state jurisdiction, including all islands within the jurisdiction of the state, and extending inland to the highest elevation of the nearest coastal mountain range, except that in Los Angeles, Orange, and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance.

§ 27101. *Coastal zone plan*

"Coastal zone plan" means the California Coastal Zone Conservation Plan.

§ 27102. *Commission*

(a) "Commission" means the California coastal zone conservation commission.

(b) "Regional commission" means any regional coastal zone conservation commission.

§ 27103. *Development*

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land pursuant to the Subdivision Map Act and any other division of land, including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

§ 27104. *Permit area*

"Permit area" means that portion of the coastal zone lying between the seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the sea subject to the following provisions:

(a) The area of jurisdiction of the San Francisco Bay Conservation and Development Commission, together with all contiguous areas 2,900 feet landward thereof, and any river, stream, tributary, creek, or flood control or drainage channel which flows into such area, is excluded.

(b) If any portion of any body of water, which is not subject to tidal action, lies within the permit area, the body of water together with a strip of land 1,000 feet wide surrounding it shall be included; provided, however, that this

subdivision does not apply to any river, stream, tributary, creek, or flood control or drainage channel when a portion of it lies within the permit area.

(c) Any urban land area which is (1) a residential area zoned, stabilized and developed to a density of four or more dwelling units per acre on or before January 1, 1972; or (2) a commercial or industrial area zoned, developed, and stabilized for such use on or before January 1, 1972, may, after public hearing, be excluded by the regional commission at the request of a city or county within which such area is located. An urban land area is "stabilized" if 80 percent of the lots are built upon to the maximum density or intensity of use permitted by the applicable zoning regulations existing on January 1, 1972.

Tidal and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach shall not be excluded.

Orders granting such exclusion shall be subject to conditions which shall assure that no significant change in density, height, or nature of use occurs.

An order granting exclusion may be revoked at any time by the regional commission, after public hearing.

(d) Each regional commission shall adopt a map delineating the precise boundaries of the permit area within 60 days after its first meeting and file a copy of such map in the office of the county clerk of each county within its region. In delineating any inland boundary of the permit area, the regional commission may adjust such boundary by moving it seaward by not more than 50 yards. Such adjustments may only be made to avoid bisecting any lot or parcel owned by the same person or to conform to identifiable physical natural or manmade features such as streets, highways, or any structures, in order to more efficiently

carry out the provisions of Chapter 5 (commencing with Section 27400 of this division.

Underline indicates changes or additions by amendment

§ 27105. *Person*

"Person" includes any individual, organization, partnership, and corporation, including any utility and any agency of federal, state, and local government.

§ 27106. *Sea*

"Sea" means the Pacific Ocean and all the harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through a connection with the Pacific Ocean, excluding nonestuarine rivers * * *, streams, tributaries, creeks and flood control and drainage channels.

CHAPTER 3. CREATION, MEMBERSHIP, AND POWERS OF COMMISSION AND REGIONAL COMMISSIONS

Article *Section*

1. Creation and Membership of Commissions and Regional Commissions 27200
2. Organization 27220
2.5 Conflicts of Interest 27230
3. Powers and Duties 27240

ARTICLE 1. CREATION AND MEMBERSHIP OF COMMISSIONS AND REGIONAL COMMISSIONS

Sec.

27200. Commission; creation; membership.
27201. Regional commissions; creation; membership.
27202. Members; selection or appointment.
27203. Alternate member; qualifications; powers and duties; expenses [New.]

ARTICLE 2. ORGANIZATION

Sec.

27220. Public members; qualifications.
27221. Members, appointment or selection; time.
27222. Cessation of membership; vacancies.
27223. Compensation; expenses.
27224. Meetings; open to public; majority vote.
27225. First meeting.
27226. Headquarters; location.

§ 27220. *Public members; qualifications*

Each public member of the commission or of a regional commission shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses in light of the policies set forth in this division, to be responsive to the scientific, social, esthetic, recreational, and cultural needs of the state. Expertise in conservation, recreation, ecological and physical sciences, planning, and education shall be represented on the commission and regional commissions.

§ 27221. *Members; appointment or selection; time*

Each member of the commission and each regional commission shall be appointed or selected not later than December 31, 1972.

Each appointee of the Governor shall be subject to confirmation by the Senate.

§ 27222. *Cessation of membership; vacancies*

In the case of persons qualified for membership because they hold a specified office, such membership ceases when

their term of office ceases. Vacancies which occur shall be filled in the same manner in which the original member was selected or appointed.

§ 27223. *Compensation; expenses*

Except as provided in this section, members shall serve without compensation but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement is not otherwise provided by another public agency. All members • • • shall receive fifty dollars ($50) for each full day of attending meetings of the commission or of any regional commission.

§ 27224. *Meetings; open to public; majority vote*

The commission and regional commissions shall meet no less than once a month at a place convenient to the public. Unless otherwise provided in this division, no decision on permit applications or on the adoption of the coastal zone plan or any part thereof shall be made without a prior public hearing. All meetings of the commission and each regional commission shall be open to the public. A majority affirmative vote of the total authorized membership shall be necessary to approve any action required or permitted by this division, unless otherwise provided.
(Added by Initiative Measure approved by the electors November 7, 1972.)

§ 27225. *First meeting*

The first meeting of the commission shall be no later than February 15, 1973. The first meeting of the regional commissions shall be no later than February 1, 1973.

§ 27226. *Headquarters; location*

The headquarters of the commission shall be in a city, county, or city and county which lies, in whole or in part, within the coastal zone.

ARTICLE 2.5 CONFLICTS OF INTEREST

Sec.

27230. Appearances and actions in official capacity; certain persons prohibited.
27231. Financial interests of members of employees.
27232. Disclosure of interest; approval.
27233. Voting by county and city officials.
27234. Violations; punishment.

§ 27230. *Appearances and actions in official capacity; certain persons prohibited*

Except as hereinafter provided none of the following persons shall appear or act, in any capacity whatsoever except as a representative of the state, or political subdivision thereof, in connection with any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which the coastal zone plan, or the commission or any regional commission is involved in an official capacity:

(a) Any member or employee of the commission or regional commission;

(b) Any former member or employee of the commission or regional commission during the year following termination of such membership or employment;

(c) Any partner, employer, an employee of a member or employee of the commission or any regional commission, when the matter in issue is one which is under the official responsibility of such member or employee, or in con-

nection with which such member or employee has acted or is scheduled to act, in any official capacity whatsoever.

§ 27231. *Financial interests of members or employees*

No member or employee of the commission or any regional commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interest: the member or employee himself; his spouse; his child; his partner; any organization in which he is then serving or has, within two years prior to his selection or appointment to or employment by such commission or regional commission, served, in the capacity of officer, director, trustee, partner, employer or employee; any organization within which he is negotiating for or has any arrangement or understanding concerning prospective partnership or employment.

§ 27232. *Disclosure of interest; approval*

In any case within the coverage of Section 27230, or Section 27231 when the commission determines that in any case within the coverage of such section the financial interest involved is not substantial, the prohibitions therein contained shall not apply if the person concerned advises the commission in advance of the nature and circumstances thereof, including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the commission a written determination that the contemplated action will not adversely affect the integrity of the commission or any regional commission. Any • • • determination made pursuant to this section shall require the affirmative vote of two-thirds of the members of the commission.

§ 27233. *Voting by county and city officials*

Nothing in this article shall preclude or prevent any member of the commission or any regional commission, or any employee thereof, who is also an employee of another public agency, a county supervisor • • •, city councilman, member of the Association of Bay Area Governments, member of the Association of Monterey Bay Associated Governments, delegate to the Southern California Association of Governments, or member of the San Diego Comprehensive Planning Organization, and who has in such designated capacity voted or acted upon a particular matter, from voting or otherwise acting upon • • • such matter • • • as a member of the commission or any regional commission, or employee thereof, as the case may be. Nothing in this section shall be construed to exempt any such member of the commission or any regional commission, or any employee thereof, from any other provision of this article.

§ 27234. *Violations; punishment*

Any person who violates any provision of this article shall, upon conviction, and for each such offense, be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison for not more than two years, or both.

ARTICLE 3. POWERS AND DUTIES

Sec.

27240. Enumeration.
27241. Assistance from governmental agencies.
27242. Elements of California Comprehensive Ocean Area Plan; transfer to commission.
27243. Chairman; executive director.

§ 27240. *Enumeration*

The commission and each regional commission may:

(a) Accept grants, contributions, and appropriations;

(b) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(c) Be sued and sue to obtain any remedy to restrain violations of this division. Upon request of the commission or any regional commission, the State Attorney General shall provide necessary legal representation.

(d) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this division, but no regulations shall be adopted without a prior public hearing.

§ 27241. *Assistance from governmental agencies*

The commission and regional commissions may request and utilize the advice and services of all federal, state, and local agencies. Upon request of a regional commission any federally recognized regional planning agency within its region shall provide staff assistance insofar as its resources permit.

§ 27242. *Elements of California Comprehensive Ocean Area Plan; transfer to commission*

All elements of the California Comprehensive Ocean Area Plan, together with all staff and funds appropriated or allocated to it, shall be delivered by the Governor and shall be attached and allocated to the commission at its first meeting.

§ 27243. *Chairman; executive director*

The commission and each regional commission shall each elect a chairman and appoint an executive director, who shall be exempt from civil service.

CHAPTER 4. CALIFORNIA COASTAL ZONE CONSERVATION PLAN

Article — *Section*
1. Generally 27300
2. Planning Procedure 27320

ARTICLE 1. GENERALLY

Sec.
27300. Preparation, adoption and submission to legislature.
27301. Basis of plan; studies of factors.
27302. Consistency with objective.
27303. Content.
27304. Components.

§ 27300. *Preparation, adoption and submission to legislature*

The commission shall prepare, adopt, and submit to the Legislature for implementation the California Coastal Zone Conservation Plan.

§ 27301. *Basis of plan; studies of factors*

The coastal zone plan shall be based upon detailed studies of all the factors that significantly affect the coastal zone.

§ 27302. *Consistency with objectives*

The coastal zone plan shall be consistent with all of the following objectives:

(a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

(b) The continued existence of optimum populations of all species of living organisms.

(c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

(d) Avoidance of irreversible and irretrievable commitments of coastal zone resources.

§ 27303. *Content*

The coastal zone plan shall consist of such maps, text and statements of policies and objectives as the commission determines are necessary.

§ 27304. *Components*

The plan shall contain at least the following specific components:

(a) A precise, comprehensive definition of the public interest in the coastal zone.

(b) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(c) A component which includes the following elements:

(1) A land-use element.

(2) A transportation element.

(3) A conservation element for the preservation and management of the scenic and other natural resources of the coastal zone.

(4) A public access element for maximum visual and physical use and enjoyment of the coastal zone by the public.

(5) A recreation element.

(6) A public services and facilities element for the general location, scale, and provision in the least environmentally destructive manner of public services and facilities in the coastal zone. This element shall include a power plant siting study.

(7) An ocean mineral and living resources element.

(8) A population element for the establishment of maximum desirable population densities.

(9) An educational or scientific use element.

(d) Reservations of land or water in the coastal zone for certain uses, or the prohibition of certain uses in specific areas.

(e) Recommendations for the governmental policies and powers required to implement the coastal zone plan including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

ARTICLE 2. PLANNING PROCEDURE

Sec.

27320. Publication of objectives, guidelines, etc. by commission recommendations by regional commissions.

§ 27320. *Publication of objectives, guidelines, etc. by commission; recommendations by regional commissions*

(a) The commission shall, within six months after its first meeting, publish objectives, guidelines, and criteria for the collection of data, the conduct of studies, and the preparation of local and regional recommendations for the coastal zone plan.

(b) Each regional commission shall, in cooperation with appropriate local agencies, prepare its definitive conclusions and recommendations, including recommendations for areas that should be reserved for specific uses or within which specific uses should be prohibited, which it shall, after public hearing in each county within its region, adopt and submit to the commission no later than April 1, 1975.

(c) On or before December 1, 1975, the commission shall adopt the coastal zone plan and submit it to the Legislature for its adoption and implementation.

CHAPTER 5. INTERIM PERMIT CONTROL

Article *Section*
1. General Provisions 27400
2. Permit Procedure 27420

ARTICLE 1. GENERAL PROVISIONS

Sec.
27400. Necessity of permit.
27401. Developments requiring two-thirds vote.
27402. Findings by regional commissions.
27403. Terms and conditions.
27404. Vested rights.
27405. Exemptions; residences; maintenance of navigation channels; other repair or maintenance activities.

§ 27400. *Necessity of permit*

On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency.

Except as provided in Sections 27401 and 27422, no permit shall be issued without the affirmative vote of a majority of the total authorized membership of the regional commission, or of the commission on appeal.

§ 27401. *Developments requiring two-thirds vote*

No permit shall be issued for any of the following without the affirmative vote of two-thirds of the total authorized membership of the regional commission, or of the commission on appeal:

(a) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(b) Any development which would reduce the size of any beach or other area usable for public recreation.

(c) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches and the mean high tideline where there is no beach.

(d) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.

(e) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential commercial and sport fisheries, or agricultural uses of land which are existing on the effective date of this division.

§ 27402. *Findings by regional commissions*

No permit shall be issued unless the regional commission has first found, both of the following:

(a) That the development will not have any substantial adverse environmental or ecological effect.

(b) That the development is consistent with, the findings and declarations set forth in Sections 27001 and with the objectives set forth in Section 27302.

The applicant shall have the burden of proof on all issues.

§ 27403. *Terms and conditions*

All permits shall be subject to reasonable terms and conditions in order to ensure:

(a) Access to publicly owned or used beaches, recreation areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.

(b) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(c) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal zone resources.

(d) Alterations to existing land forms and vegatation, and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

§ 27404. *Vested rights*

If, prior to * * * November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to * * * November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material.

§ 27405. *Exemptions; residences; maintenance of navigation channels; other repair or maintenance activities*

Notwithstanding any provision in this chapter to the contrary, no permit shall be required for the following types of development:

(a) Repairs and improvements not in excess of seven thousand five hundred dollars ($7,500) to existing single-

family residences; provided, that the commission shall specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(b) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the permit area, pursuant to a permit from the United States Army Corps of Engineers.

(c) Repair or maintenance activities of any sort; provided, that such activities do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities.

ARTICLE 2. PERMIT PROCEDURE

Sec.

27420. Applications; fees; appropriation; hearings; appeal.
27421. Local permits; copy to regional commission.
27422. Emergency issuance, notice and hearing on non-emergency permits.
27423. Appeals to commission.
27424. Judicial review.
27425. Actions for declaratory and equitable relief.
27426. Actions for civil penalties.
27427. Additional remedies.
27428. Costs; attorney fees.

§ 27420. *Applications; fees; appropriation; hearings; appeal*

(a) The commission shall prescribe the procedures for permit applications and their appeal and may require a reasonable filing fee and the reimbursement of expenses. All such fees and reimbursements collected heretofore or

hereafter shall be credited to, and shall be in augmentation of, the appropriation made in Section 4 of Proposition 20 as approved by the electorate at the general election on November 7, 1972, and are hereby appropriated to the commission for the same period and for the same purposes as set forth therein.

(b) The regional commission shall give written public notice of the nature of the proposed development and of the time and place of the public hearing. Such hearing shall be set no less than 21 nor more than 90 days after the date on which the application is filed.

(c) The regional commission shall act upon an application for permit within 60 days after the conclusion of the hearing and such action shall become final after the 10th working day unless an appeal is filed within that time.

§ 27421. *Local permits; copy to regional commission*

Each unit of local government within the permit area shall send a duplicate of each application for a development within the permit area to the regional commission at the time such application for a local permit is filed, and shall advise the regional commission of the granting of any such permit.

§ 27422. *Emergency issuance; notice and hearing on nonemergency permits.*

The commission shall provide, by regulation, for the issuance of permits by the executive directors without compliance with the procedure specified in this chapter in cases of emergency or for repairs or improvements to existing structures not in excess of twenty-five thousand dollars ($25,000) and other developments not in excess of ten thousand dollars ($10,000). Nonemergency permits shall not be effective until after reasonable public notice and

adequate time for the review of such issuance has been provided. If any two members of the regional commission so request at the first meeting following the issuance of such permit, such issuance shall not be effective and instead the application shall be set for a public hearing pursuant to the provisions of Section 27420.

§ 27423. *Appeals to commission*

(a) An applicant, or any person aggrieved by approval of a permit by the regional commission, may appeal to the commission.

(b) The commission may affirm, reverse, or modify the decision of the regional commission. If the commission fails to act within 60 days after notice of appeal has been filed, the regional commission's decision shall become final.

(c) The commission may decline to hear appeals that it determines raise no substantial issues. Appeals it hears shall be scheduled for a de novo public hearing and shall be decided in the same manner and by the same vote as provided for decisions by the regional commissions.

§ 27424. *Judicial review*

Any person, including an applicant for a permit, aggrieved by the decision or action of the commission or regional commission shall have a right to judicial review of such decision or action by filing a petition for a writ of mandate * * * in accordance with the provisions of Chapter 2, (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, within 60 days after such decision or action has become final.

§ 27425. *Actions for declaratory and equitable relief*

Any person may maintain an action for declaratory and equitable relief to restrain violation of this division. No bond shall be required for an action under this section.

§ 27426. *Actions for civil penalties*

Any person may maintain an action for the recovery of civil penalties provided in Sections 27500 and 27501.

§ 27427. *Additional remedies*

The provisions of this article shall be in addition to any other remedies available at law.

§ 27428. *Costs; attorney fees*

Any person who prevails in a civil action brought to enjoin a violation of this division or to recover civil penalties shall be awarded his costs, including reasonable attorneys fees.

CHAPTER 6. PENALTIES

Sec.

27500. Civil fine.
27501. Additional penalties.

§ 27500. *Civil fine*

Any person who violates any provision of this division shall be subject to a civil fine not to exceed ten thousand dollars ($10,000).

§ 27501. *Additional penalties*

In addition to any other penalties, any person who performs any development in violation of this division shall be subject to a civil fine not to exceed five hunderd dollars ($500) per day for each day in which such violation persists.

CHAPTER 7. REPORTS

Sec.

27600. Annual filing.

§ 27600. *Annual filing*

(a) The commission shall file annual progress reports with the Governor and the Legislature not later than the fifth calendar day of the 1974 and 1975 Regular Session of the Legislature, and shall file its final report containing the coastal zone plan with the Governor and the Legislature not later than the fifth calendar day of the 1976 Regular Session of the Legislature.

CHAPTER 8. TERMINATION

Sec.

27650. Duration of division.

§ 27650. *Duration of division*

This division shall remain in effect until January 1, 1977, and as of that date is repealed.